

Town of Frederick Board of Trustees



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AM 2009-029

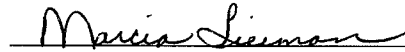
To consider a request to transfer water rights within No Name Creek West Subdivision

Agenda Date: Town Board Meeting - March 24, 2009

Attachments:

- a. Resolution 04-R-23
- b. Letter from J.D. Parker

Fiscal Note: See Financial Considerations below.


Finance Director

Submitted by: Richard Leffler, P.E. 
Town Engineer

Approved for Presentation: 
Town Administrator

AV Use Anticipated Projector _____ Laptop _____

Certification of Board Approval:

Town Clerk

Date

Summary Statement:

The Town has a policy that once shares of CBT (Colorado Big Thompson) water are dedicated to the Town and have been assigned to a specific lot, those shares may not be transferred to another lot without Board Approval. This is a request by the developer of No Name Creek West Subdivision to transfer up to 18 CBT units to other lots within this subdivision, and to waive the \$50 per unit fee.

Detail of Issue/Request:

Section 13.55 of the Town's municipal code requires that shares of CBT, cash-in-lieu, or other acceptable water rights be dedicated to the Town for each property desiring water service. These water rights are typically dedicated in large blocks for a single phase of a subdivision, or for the entire subdivision all at once. For residential developments water rights must be dedicated to the Town, and

associated with a given lot, prior to a building permit being issued for any lot in a given phase of a subdivision. The Town had numerous requests in past years for developers to transfer water rights from the lot to which those shares have been assigned, to another lot. This practice resulted in confusion about which lots actually had water rights dedicated and led to the adoption of a resolution in 2002 that required that water rights could be transferred only with Town Board approval. This resolution was updated and the current policy is dictated by Resolution No. 04-R-23, dated May 27th, 2004, which states:

“At the discretion of the Board of Trustees, credit for CBT units dedicated to the Town may be transferred between lots within a single subdivision, or transferred between subdivisions. Transfers between subdivisions must be in blocks of not less than 6 CBT units or multiples thereof. An administrative fee of \$50.00 for each 1.2 CBT units to be transferred shall be paid to the Town with the completed transfer application.”

The reason for the policy is to ensure proper accounting of water rights. Whenever a transfer of rights from one lot to another occurs, the possibility exists that there will be an error in recordkeeping or that it may be unclear to purchasers of a lot if it has water rights. Due to this risk, and the additional staff time and diligence that such transfers require, the Board, with this resolution, requires that the transfer process be more formal and a \$50.00 fee be paid. This policy was reportedly not initially widely publicized or strictly enforced. Some CBT units were still assigned to undeveloped lots when the same developer had developed lots without water rights. To remedy this, in early 2007 staff notified all developers that they needed to clarify which lots they wanted their CBT units attached to and that any future transfers would require Board approval. The attached request letter from No Name Creek refers to a one time final transfer and staff assumes this was the notice given in 2007. A note on a transmittal form in the Building Division files dated April 5, 2007 indicates that No Name Creek, LLC transferred water from one lot to another and was informed that this was the last transfer staff would be able to make.

Recently due to economic factors, there have been requests, including this one, to transfer water shares between lots. Staff is considering changes to the Building Permit software that will add the tracking of water rights to this package instead of the manual tracking that has been used in the past. Based on the guidance given by the resolution, staff must require that these requests go before the Town Board and a \$50 fee be paid per 1.2 shares of CBT transferred. The specific item to be considered by this AM is asking that the Board allow the transfer of water for 15 lots (18 shares of CBT) in the No Name Creek West Subdivision to other lots also within the subdivision, and the developer is asking for the Board to waive the transfer fee.

Legal/Political Considerations:

Staff has spoken with legal counsel regarding this matter, and has been advised that the process being followed by staff is correct according to the Town's regulations, and that staff needs direction from the Board prior to allowing any water transfers. There are no further legal issues.

Alternatives/Options:

- 1) Allowing the developer to transfer water shares, and requiring a \$50.00 fee for the transfer of each 1.2 shares.
- 2) Allowing the developer to transfer water shares, and waiving the transfer fee.
- 3) Not allowing the developer to transfer water shares.

Financial Considerations:

If the Board waives the \$50.00 per 1.2 shares of CBT transfer fee then the Town will be losing revenue that has previously been required by resolution. It is staff's opinion that requiring the transfer fee is appropriate in this situation.

Staff Recommendation:

Staff recommends that the Board move to approve the request by the developer of No Name Creek West subdivision to transfer up to 18 shares of CBT within the subdivision and assess the fees established by Resolution No. 04-R-23.